REMARKS

Reconsideration and allowance in view of the foregoing amendment and the following remarks are respectfully requested. Applicant has added new claims 39-54 which correspond to original claims 1, 3, 5-7, 9-10, 14, 16, 18-20, 22-23 and 27-29. Claims 30-38 have been cancelled and will be pursued in a divisional application.

Rejection of Claims 1, 3, 5-7, 9-10, 14, 16, 18-20, 22-23, 27 and 28 Under 35 U.S.C. §103(a)

The Office Action rejects claims 1, 3, 5-7, 9-10, 14, 16, 18-20, 22-23, 27 and 28 (now under claims 39-54) under 35 U.S.C. §103(a) as being unpatentable over Frerichs et al. (U.S. Patent No. 6,684,249) ("Frerichs") in view of Greer et al. (U.S. Patent No. 5,978,828) ("Greer et al."). Applicant respectfully traverses this rejection and respectfully submits that one of skill in the art would not have sufficient motivation or suggestion to combine Frerichs et al. with Greer et al.

Applicant appreciates the response to arguments provided by the Examiner. Applicant shall further develop and address these arguments regarding why, under preponderance of the evidence standard, one of skill in the art would be less likely to combine these references than more likely. Applicant notes that we are not simply attacking the references individually, but are providing an analysis of the objective suggestive power of each reference and regarding what they would teach to one of skill in the art. Applicant again highlights that there is a fundamental difference between Frerichs et al. and Greer et al. which cannot be ignored, which is the fact that Frerichs et al. deals with inserting advertisements into streaming audio and Greer et al. teach a webpage content notification procedure. Applicant notes that the process of analyzing the suggestive power of each of these references under the preponderance of the evidence standard requires the person making the judgment (in this case the Examiner) to weigh the arguments and evidence on each side. Applicant does not argue that the Examiner has no evidence of any

reason to combine these references in that it is for example, fairly-well established that Frerichs et al. teach that an add sequence or a track may expire. See column 9, line 54. However, Applicant also urges that Applicant's argument above is fairly weighty given that one of skill in the art would not immediately find any suggestion or motivation to combine an audio streaming application in Frerichs et al. with the webpage content notification update invention of Greer et al. Thus, balancing these two pieces of evidence, Applicant simply submits that Applicant has the weightier argument.

In addition, Applicant addresses the argument on page 3 of the Office Action that Frerichs et al. actually teach "that the system software checks for the most recent list of advertisement and for expired advertisements (column 9, lines 44-54), which actually indicates that the system updates or replaces expired advertisements." This portion of Frerichs et al. does teach the following:

> "When the streaming audio begins, the software checks for the most recent list of advertisement sequences available for that user. The list of sequences is generated by first matching the user demographic with the currently running advertisement sequences, for example. The software also checks to see how many times each advertisement has been heard by the user. The information is summarized in an available advertisement list that contains the relevant ad sequences, their associated audio tracks, and the number of times each track can still be heard by this listener before they expire."

Thus, Frerichs et al. do discuss a process of checking for the most recent advertisement sequences available to a user. It appears that this reference also discusses by tracking how many times an advertisement has been heard by the user, the system can provide a limit before a particular advertisement "expires". For example, if a user is only allowed to hear an advertisement three times, then once the software checks to see how many times an advertisement has been heard by the user the streaming software may only allow it to be heard one or two or no more times.

Applicant notes that the response by the Examiner on page 3, when read in view of the teachings of Frerichs et al. and Greer et al., appears to be quite disjointed. When the Examiner states "thus the combination of Frerichs et al. and Greer et al's systems suggests to those of ordinary skill in the art that transmitting updated/new advertisements to replace expired/out-of-date advertisement is an obvious feature of Frerichs et al. improved upon by the features of Greer et al. that provide update notification of web content, including the updating of advertisements (Figures 4 and 9, col.3, lines 24-39)." Applicant notes that the reason this appears disjointed is that as we have seen in the discussion of Frerichs et al., they are focused on streaming of audio to a user and how appropriate advertisements may be inserted into the streaming audio content. There is no visual component to such an experience for the user inasmuch as the user is simply listening to audio. The transition from an audio environment to a full-blown visual and webpage environment having advertising banners and object frames and text and so forth as is shown in Figures 3 and 4 of Greer et al. is a fundamental leap.

Applicant would urge that art that deals with exclusively streaming audio and art that deals with visual webpage content are non-analogous to each other. This can be readily be seen when one asks several questions. Why would somebody listening exclusively to audio need or desire to receive a notification of modified web content in a manner as in Figure 9 or Greer et al.? In fact, as has been discussed herein and in Greer et al., the reason that Greer et al. even provides the notification associated with their invention is because of the possibility that website content can become stale or outdated. Applicant respectfully submits that the idea that the possibility that gives rise to the invention of Greer et al. is not even available according to the teachings of Frerichs et al. For example, if one of skill in the art were worried about stale content, and that person were to review the teachings of Frerichs et al., it would become clear to that person of skill in the art that there is no possibility of stale content being heard in streaming

audio by a user according to the Frerichs et al. invention, inasmuch as there is several checks already incorporated into their process for determining whether currently running advertising sequences have been played too many times for a user. In other words, using the software checks in Frerichs et al., as well as determining the number of times each track has been heard by a listener and their expiration date, one of skill in the art would readily recognize that in a streaming audio context and according to the processees identified by Frerichs et al., there is simply no stale content. Inasmuch as the content never becomes stale, Applicant respectfully submits that one of skill in the art would (1) not likely incorporate some mechanism to notify a user audibly of stale content (none exists), and (2) not likely utilize a visual notification as in Greer et al. regarding stale content (again, none exists). Applicant's arguments are weightier than the arguments of the Examiner and that on the balance, or by a preponderance of the evidence standard, Applicant submits that these references should not be combined and that the claims are patentable and in condition for allowance.

Rejection of Claim 29 Under 35 U.S.C. §103(a)

The Office Action rejects claim 29 under 35 U.S.C. §103(a) as being unpatentable over Callahan et al. (U.S. Patent No. 6,665,688) ("Callahan et al.") in view of Sitrick (U.S. Patent No. 6,425,825) ("Sitrick"). Applicant has not included a new claim corresponding to claim 29, thus rendering this rejection moot.

CONCLUSION

Having addressed all rejections and objections, Applicant respectfully submits that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited. If necessary, the Commissioner for Patents is authorized to charge or credit Novak, Druce & Quigg, LLP, **Account No. 141437** for any deficiency or overpayment.

Respectfully submitted,

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